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Where Demographic
Analysis Fits In*

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CHARTING ALTERNATIVES TO A SEGREGATED SCHOOL ADMISSIONS POLICY: WHERE DEMOGRAPHIC ANALYSIS FITS IN¹

by

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ABSTRACT

This paper illustrates how demographic analysis and data get applied in affirmative action disputes. The focus is a racially-based quota system for admitting applicants to a public school program offering accelerated learning to gifted and exceptional students. The paper evaluates the effects of this quota system on the admission of qualified nonminority applicants and considers the feasibility of alternatives for maintaining racial balance without engaging in purposeful discrimination. The analysis establishes the use of an ethnic quota system which denies admission to qualified nonminority applicants; documents the severity of its effect, whereby race (instead of academic qualification) is the deciding factor in admissions; and devises feasible nondiscriminatory alternatives to this system for maintaining racial balance among applicants admitted solely on the basis of merit. As a potential instructional case, the paper introduces students to the adversarial realm, showing how applied demographers inform their thinking with the reasoning and underlying legal principles that govern a case, clarify the issues in dispute, and fit measures to legal standards that apply.

¹ Draft of paper to be presented at the 1998 Population Association of America meetings, session on "Demographic Studies of Minority Representation in Higher Education, Employment, Juries, and Elections," April 2-4, Chicago.

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I. INTRODUCTION

The intensifying national debate on affirmative action manifests itself on numerous fronts, one being the controversial use of racial preferences in school admissions. This case study draws on a specific manifestation of this issue to explore the types of questions applied demographers are called on to answer when a disputed quota system becomes the object of a legal challenge. I shall illustrate how one goes about documenting the effects of a quota system and devising alternatives for maintaining racial balance which are not race based.

The term "affirmative action" encompasses a variety of activities and programs, "...ranging from outreach and recruitment efforts to programs that consider race as a factor in an evaluation process, which are intended to increase minority representation in employment, education, or contracting Such programs are intended to serve a variety of societal purposes, including to remedy past or present discrimination, to secure the educational benefits of a diverse campus community, to compensate for educational or other disadvantages faced by promising applicants, to prepare students for an increasingly diverse society, and to train students to serve the needs of diverse communities." (*Economic Report of the President*, pp. 138-139).

OVERVIEW OF THE PROBLEM

Schools and universities today face a dilemma. Their use of affirmative-action admissions policies fosters active opposition and legal challenge; yet if they adopt a truly color-blind policy which entirely eliminates the use of race or ethnicity as a factor for admission, the result is a student body with few minorities. The heart of the issue is an unresolved political and legal debate (see, for example, Kennedy, 1997; Shipler, 1997; Thernstrom and Thernstrom, 1997). Central to this debate is the following question: Is it more important to emphasize diversity, helping *groups* that have suffered discrimination in the past, or to be scrupulously fair to *individuals* now?

The conflict here, once confined to public universities,² now crops up in secondary and primary schools. For example, 10 white applicants to the Boston Latin

² The Board of Regents of the University of California voted in 1995 to prohibit universities within its system from considering race in admissions. In Texas et al. v. Hopwood the Court of Appeals for the Fifth Circuit held that the admissions procedure used by the University of Texas Law School in 1992 was unconstitutional.

School recently were rejected while 10 black, Asian, and Latino applicants with lower scores were admitted. The Boston School Committee was obliged to scrap an earlier policy that set aside 35% of all school places for black and Latino candidates.

BACKGROUND

The subject of this case study is the Houston Independent School District (HISD), the nation's seventh largest public school system. HISD offers a "magnet transfer program" consisting of both vanguard and magnet school programs at numerous schools within the district. The vanguard programs offer accelerated learning to gifted and exceptional students and have a reputation for being innovative and highly regarded. The magnet programs address the needs of students with talents or special interests in subjects beyond the regular curriculum, such as the arts, advanced math and science, computer technology, foreign languages, and physical development. Qualified students must gain admission to such programs at one of the 18 schools offering them. A particular school's reputation, along with its distance from home, are likely to be important criteria for seeking admission to certain schools.

Entrance into these programs is competitive and is based on various academic criteria, both objective (e.g., standardized achievement and ability tests) and subjective. In addition, HISD uses "ethnic guidelines" as one criterion for admission. A published board policy requires the schools to systematically favor black and Hispanic applicants over others in the admissions process. Specifically, the policy requires the vanguard and magnet programs to attempt to fill 65% of the available student positions with black and Hispanic (hereafter "minority") students, leaving only 35% of the slots to students classified as "Other." (See Appendix for details of how the policy works.)

This policy had consequences for "Other" (specifically white and Asian) families with school-aged children who applied to HISD's vanguard or magnet programs. Their children might satisfy the academic requirements for admission but be denied admission in the first round, whereas minority students with lower academic qualifications were admitted. A group of white and Asian parents sued HISD to "remedy unlawful and unconstitutional racial discrimination." The legal grounds (elaborated ahead) called for establishing certain points: (1) that the policy's discriminatory effect was so significant as to make race or ethnicity the determinative factor in the admissions process; and (2) that other nondiscriminatory alternatives for maintaining racial balance were feasible.

The legal challenge posed specific empirical questions to be answered through an analysis of the admissions process at particular schools:

1. Does HISD follow a practice of reserving "ethnic space" for minority applicants at any of these schools?
2. If so, does that practice have the effect of denying admission to qualified nonminority (i.e., non-Hispanic white or Asian/Pacific Islander) candidates?
3. If that effect occurs, does the "ethnic space" practice so severely skew the admissions process that race, not academic qualification, is the deciding factor in granting admission?
4. Are there feasible alternatives to an "ethnic space" admissions practice which could help maintain racial balance without purposefully discriminating between individuals on the basis of race?

The plaintiffs' attorney engaged me to undertake the necessary analyses to answer these questions. To do so, I secured and analyzed several types of data: applicant and admission summaries for programs offered at particular schools; data documenting the testing, rating, and admission of individual applicants to the programs at those schools; data showing the minority share of enrolled students at each school; and 1990 census data characterizing the neighborhood resident population surrounding each school. Together, these data would provide an objective picture of how HISD's admission practices operate, the effects those practices have on individuals' access to the magnet programs, and how those effects might differ under an alternative geographic configuration of gifted programs.

As a potential instructional case, this paper affords an introduction to the adversarial realm. I shall emphasize how applied demographers inform their thinking with the reasoning and underlying legal principles that govern a case, clarify the issues in dispute, and fit empirical measures to legal standards that apply. The final section focuses on how the results of this applied demographic analysis contributed to the eventual settlement of the dispute and the repeal of HISD's "ethnic space" policy.

II. LEGAL CONTEXT

In a legal application, applied demographers must inform their thinking with the reasoning and underlying legal principles that govern a case--principles which may evolve and change with new case law and interpretations.² For purposes of illustration, I have outlined the line of argument that the Plaintiffs' attorney invoked in this case (which I have condensed verbatim from his motion) to give a flavor of this context. His argument makes several points which are keyed to certain court decisions.³ Note how this argument places the burden on HISD to meet the "strict scrutiny" test--that is, to establish both the existence of a compelling governmental interest and that HISD's policy and its accompanying practices are narrowly tailored to satisfy that interest.⁴

First, HISD's admissions policy classifies applicants by race and, therefore, must be subjected to strict scrutiny.

A. *All governmental racial classifications are subject to strict scrutiny.* Racial classifications, even so-called benign classifications, are inherently contrary to the Fourteenth Amendment and carry the threat of stigmatic harm and hostility. Consequently, all governmental racial classifications are subject to strict scrutiny: they must serve a compelling government interest and be narrowly tailored to achieve only that interest. Strict scrutiny ensures that race-preferential programs are undeniably legitimate and serve clearly identifiable and remedial interests. Strict scrutiny "smokes out" illegitimate uses of race by ensuring that a program's goals warrant the use of a constitutionally suspect tool and that the means chosen is the best fit for achieving the compelling governmental interest.

² For this instructional case, the reader can keep abreast of developments at the Center for Equal Opportunity website (www.ceousa.org) and related sites shown there.

³ The most significant is the Supreme Court's recent (1995) decision in Adarand Constructors v. Peña, 115 S.Ct. 2097, which reversed many years of the Court's encouraging government, universities, and private industry to create programs that categorize people by race and give some people preferential treatment. The Court said that affirmative action programs based on racial preferences will receive "the strictest judicial scrutiny" and will "seldom provide a relevant basis for disparate treatment."

⁴ Under the "strict scrutiny" test, there must be a compelling state interest, such as a previous judicial, legislative, or administrative "finding" of constitutional or statutory violations of discrimination laws; and the remedy must be narrowly tailored to give relief to victims of past discrimination, and cannot extend longer than the discriminatory effects it was intended to eliminate.

B. Strict scrutiny applies because HISD's admissions policy classifies applicants on the basis of race. HISD's written policy requires vanguard and magnet schools to take affirmative steps to seek a student body that meets the racial percentages set out by the District.

Magnet programs will strive to maintain ethnic diversity in the student selection process. Ethnic guidelines will be maintained at 65% Minority (African-American, Hispanic), 35% Other (All Others) at each grade level.

This policy imposes a quota on vanguard and magnet schools within HISD. Although the policy does not strictly require schools to satisfy a 65 percent quota, the policy expressly requires each program to "strive" to meet the quota and, in so doing, requires the programs to discriminate among applicants on the basis of race. Individually, and in sum, these practices demonstrate the undeniable use of odious racial classifications that disadvantage white and Asian applicants to the vanguard and magnet programs solely on the basis of their race. The policy and its attendant practices are, therefore, presumptively unconstitutional and may only be sustained if they satisfy the compelling interest test.

Second, HISD's policy and practices are unconstitutional because there is no evidence that they are narrowly tailored to support a compelling governmental interest.

To satisfy strict scrutiny, HISD must demonstrate that their policies and practices are narrowly tailored to achieve a compelling governmental interest. HISD has failed to identify any compelling interest that could justify its use of a racial quota in their admissions policies and practices. The only two potential interests identified in the record are (1) ethnic diversity, and (2) fear of resegregation. Neither potential interest is compelling.

In plain English, the argument is: When you classify by race, you must have a compelling purpose for doing so, and the remedy must be narrowly tailored to target the victims of past discrimination to achieve that purpose alone.

III. ADDRESSING THE QUESTIONS

The legal argument by the plaintiffs' attorney posed the four questions listed above. In this section, I illustrate how one draws on a demographic perspective to inform the analysis of data for answering them.

1. DOES HISD RESERVE SPACES FOR PARTICULAR ETHNIC GROUPS?

Plaintiffs in this case assert that HISD follows its written policy of reserving 65% of spaces for qualified applicants who are either black or Hispanic, thereby leaving 35% of spaces for qualified non-Hispanic applicants of any other race. If so, HISD's "ethnic space" practice--and the specific percentage shares--would reveal themselves statistically in a sufficiently large sample of applicants. To ascertain whether HISD has followed such a practice, I assembled summary data shown in Table 1 on each relevant program. Figs. 1a - 1e highlight certain differences graphically. For each school, Table 1 shows:

- The overall percentage of qualified applicants accepted during the time period shown ("All groups" row);
- The corresponding percentage for qualified minority applicants ("Total minority"), with blacks and Hispanics further distinguished;
- The corresponding percentage for qualified nonminority applicants ("Total other"), with whites and Asian/Pacific Islanders further distinguished.

These data indicate considerable variability among schools and grade levels but reveal an overall pattern, as detailed below:

T.H. Rogers Fourth Grade: Minority applicants register a 53% acceptance rate, compared with a 26% rate among nonminority ("other") applicants. The differential here produces 30 minority applicants (i.e., 53% of the 57 qualified individuals) and 16 nonminority applicants (i.e., 26% of the 62 qualified individuals) totaling 46 admissions. Minority applicants constitute 65% of those 46 admissions.

T.H. Rogers Sixth Grade: Here, minority applicants register a 94% acceptance rate, compared with a 25% rate among nonminority applicants. That differential produces 83 minority applicants (i.e., 94% of the 88 qualified individuals) and 51 nonminority applicants (i.e., 25% of the 205 qualified individuals) totaling 134 admissions. Minority applicants constitute 62% of those 134 admissions.

Lanier Middle School: Here, every one of the minority applicants was accepted compared with 38% of nonminority applicants. This differential produces 247 minority applicants (all available) and 266 nonminority applicants (i.e., 38% of the 700 qualified individuals) totaling 513 admissions. Here, minority applicants constitute 48%, the largest share possible among those 513 admissions.

Bellaire High School: Again, 100% of minority applicants were accepted compared with 41% of nonminority applicants. This differential produces 121 minority applicants (all available) and 96 nonminority applicants (i.e., 41% of the 234 qualified individuals) totaling 217 admissions. Minority applicants constitute 56%, again the largest share possible among those 217 admissions.

Herod Elementary: All 4 minority applicants were accepted, compared with 43% of nonminority applicants. This differential produces 4 minority applicants (all available) and 16 nonminority applicants (i.e., 43% of the 37 qualified individuals) totaling 20 admissions. Minority applicants constitute 20%, again the largest share that would be possible among those 20 admissions.

As these comparisons show, minority applicants get admitted at a substantially higher rate than their nonminority counterparts within the pool of qualified applicants. This consistent differential (whatever its explanation) has the effect of boosting minorities' share among the students who were admitted relative to minorities' share within the entire qualified applicant pool (see Fig. 2). Moreover, this differential has the effect of boosting the white/Asian share among the students who were denied admission relative to their share of all qualified applicants (see Fig. 3).

Table 1--Differential Outcomes of Ethnic Preferences:
Qualified Applicants

Applicants' Ethnic ID	Qualified applicants				
	No.	Total %	Accept	Wait List	Qualified/ no space
<i>T. H. Rogers Fourth Grade ('96-'97 combined)</i>					
<i>All groups</i>	119	100%	39%	0%	61%
<i>Total minority</i>	57	100%	53%	0%	47%
Black	34	100%	53%	0%	47%
Hispanic	23	100%	52%	0%	48%
<i>Total other</i>	62	100%	26%	0%	74%
White	43	100%	26%	0%	74%
Asian	19	100%	26%	0%	74%
<i>T. H. Rogers Sixth Grade ('96-'97 combined)</i>					
<i>All groups</i>	293	100%	46%	0%	54%
<i>Total minority</i>	88	100%	94%	0%	6%
Black	38	100%	95%	0%	5%
Hispanic	50	100%	94%	0%	6%
<i>Total other</i>	205	100%	25%	0%	75%
White	141	100%	26%	0%	74%
Asian	64	100%	23%	0%	77%
<i>Lanier Middle School ('96-'97 combined)</i>					
<i>All groups</i>	947	100%	54%	26%	20%
<i>Total minority</i>	247	100%	100%	0%	0%
Black	116	100%	100%	0%	0%
Hispanic	131	100%	100%	0%	0%
<i>Total other</i>	700	100%	38%	35%	27%
White	578	100%	37%	36%	26%
Asian	122	100%	40%	31%	29%

Table 1--Differential Outcomes of Ethnic Preferences:
Qualified Applicants (cont.)

Applicants' Ethnic ID	Qualified applicants				
	No.	Total %	Accept	Wait List	Qualified/ no space
<i>Bellaire High School (3/14/97 data)</i>					
<i>All groups</i>	355	100%	61%	9%	30%
<i>Total minority</i>	121	100%	100%	0%	0%
Black	59	100%	100%	0%	0%
Hispanic	62	100%	100%	0%	0%
<i>Total other</i>	234	100%	41%	13%	46%
White	147	100%	37%	14%	50%
Asian	87	100%	48%	13%	39%
<i>Herod Elementary (4/10/96)</i>					
<i>All groups</i>	41	100%	49%	51%	0%
<i>Total minority</i>	4	100%	100%	0%	0%
Black	2	100%	100%	0%	0%
Hispanic	2	100%	100%	0%	0%
<i>Total other</i>	37	100%	43%	57%	0%
White	37	100%	43%	57%	0%
Asian	0	--	--	--	--

Sources: Defs' ROE00356-ROE00365.

Note: Excludes incomplete applications.

Figure 1a

Unequal Opportunities for Acceptance
T. H. Rogers 4th G (1996-1997)

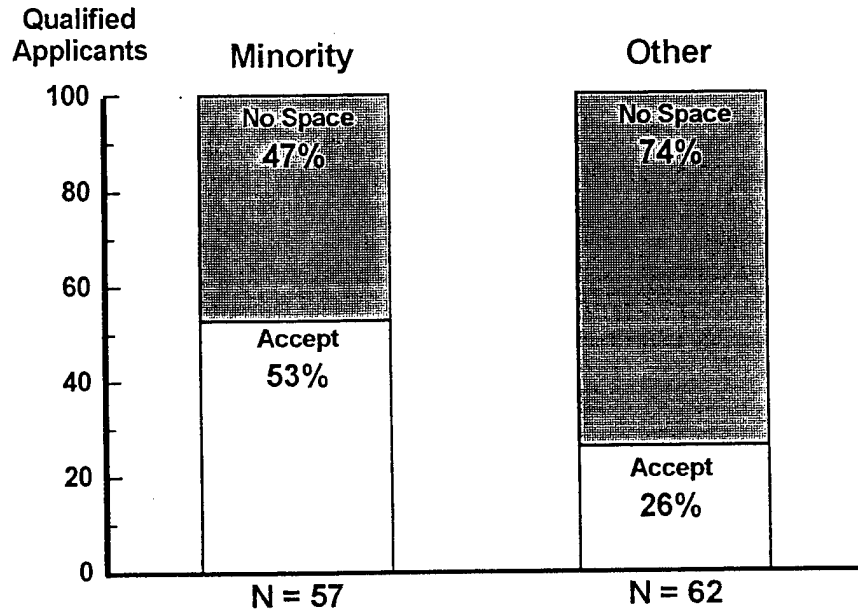


Figure 1b

Unequal Opportunities for Acceptance
T. H. Rogers 6th G (1996-1997)

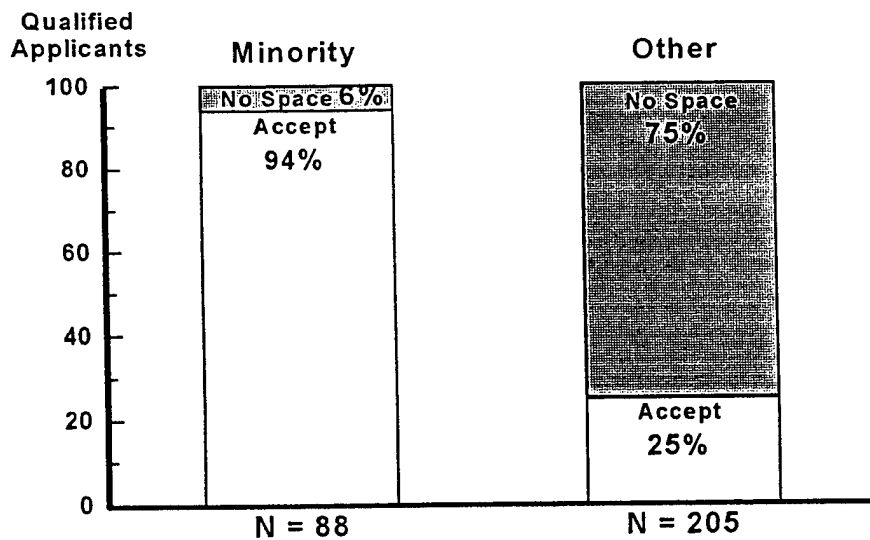


Figure 1c

Unequal Opportunities for Acceptance Lanier MS (1996–1997)

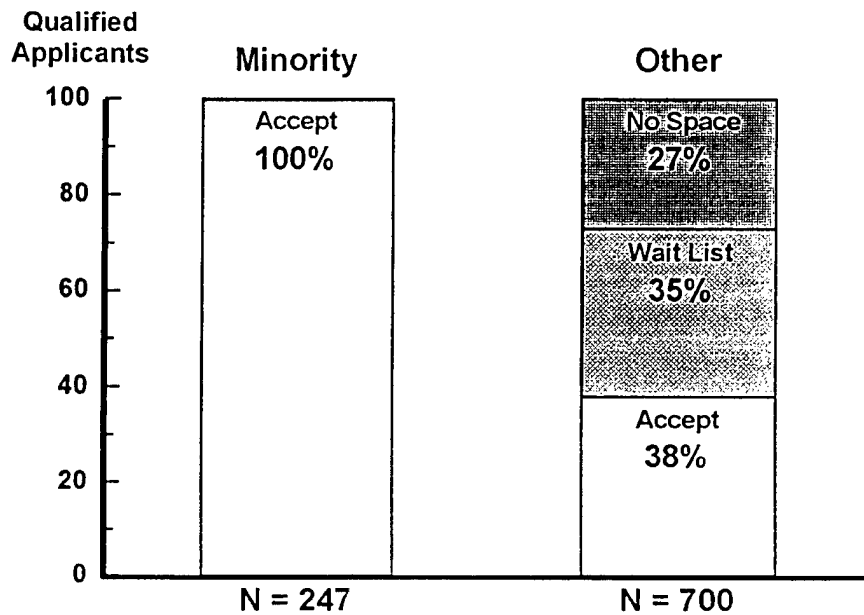


Figure 1d

Unequal Opportunities for Acceptance Bellaire (1997)

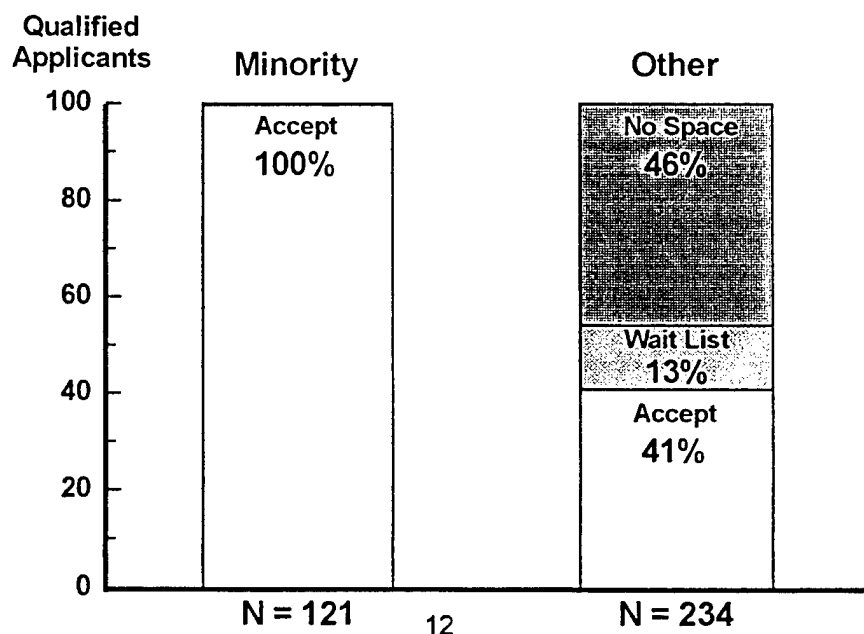
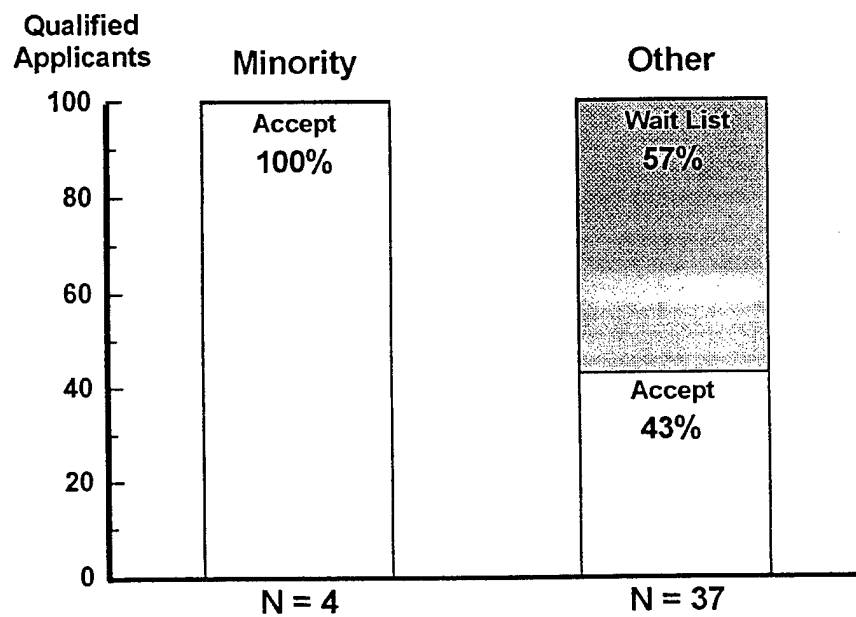


Figure 1e

Unequal Opportunities for Acceptance Herod Elem. (1996)



These comparisons reveal a clear and consistent pattern of differences, one that is strongly indicative of an ethnic quota system aimed at attaining a 65%-minority share among admissions. Specifically:

- Minorities' share among the applicants admitted invariably exceeds their share among the entire qualified applicant pool (see Fig. 2). At Lanier, for example, minorities constitute 48% of the applicants admitted but only 26% of all who qualified for potential admission. This pattern is consistent with some form of quota system being put into practice.
- Minorities' share of applicants admitted ranges from 20% to 65% across schools (Fig. 2). That range is indicative of a 65%-minority target. At schools where this minority share was under 62% (Bellaire, Lanier, and Herod), *all* minority applicants were admitted (100% acceptance), thereby exhausting the available pool of qualified minority applicants.
- *Nonminorities'* share among applicants denied admission because of "no ethnic space" invariably exceeds their share among the entire qualified applicant pool (see Fig. 3). At T.H. Rogers Fourth Grade, for example, whites and Asians combined make up 52% of the qualified applicant pool but 63% of the qualified applicants turned away. At other schools with an ethnically mixed applicant pool, those being denied admission are virtually all whites and Asians. This pattern is strongly indicative of an "ethnic space" quota system in practice.

Considered as a whole, the data in Table 1 and Figs. 1 through 3 form a clear and unambiguous statistical footprint of practices favoring the admission of minorities over nonminorities at schools of their choice. Furthermore, the extreme (100%) acceptance rate of minority applicants at three of these schools suggests that the practice(s) involve a quota system which reserves at least 56% of available spaces for minority applicants. My reasoning here is that minority applicants were being accepted at a 100% rate even when their level was as high as 56% of all admissions (as at Bellaire).

Figure 2

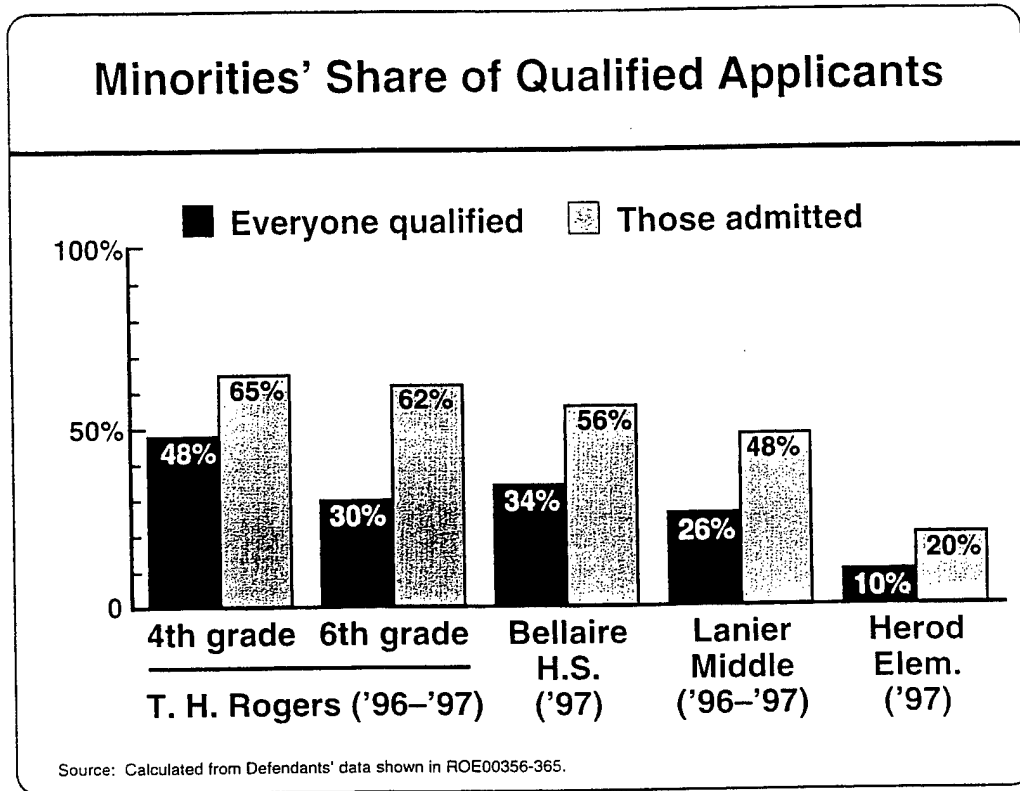
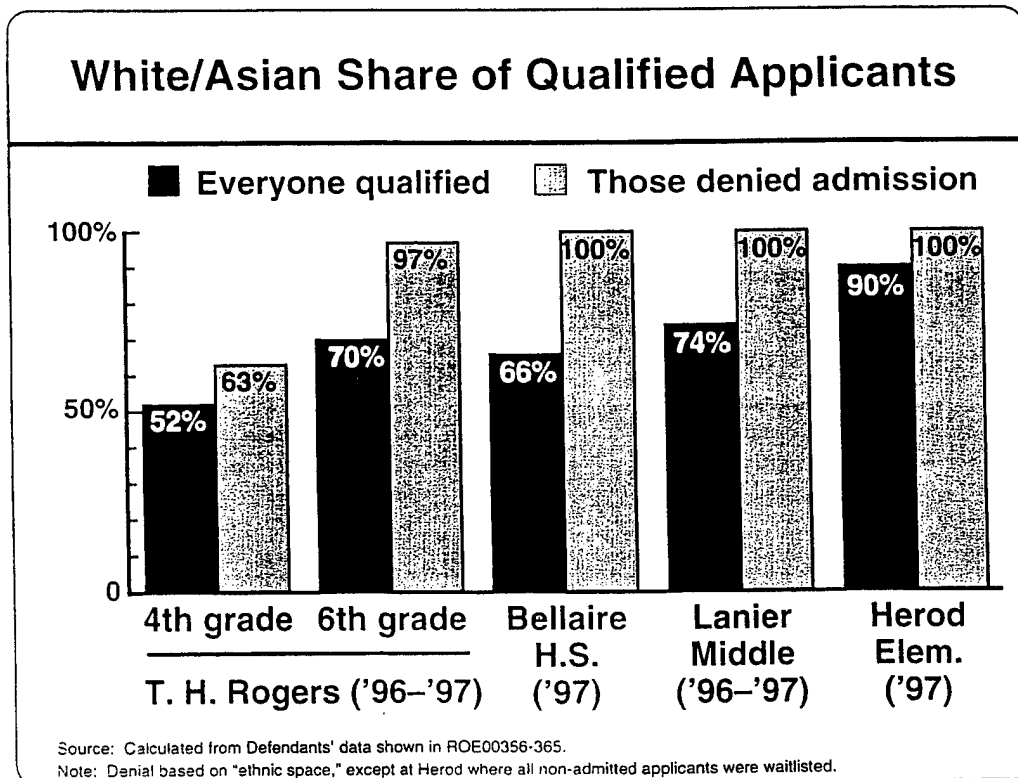


Figure 3



Based on these data, one can conclude that (1) HISD almost certainly employs an ethnic quota system in allocating space within the vanguard and magnet school programs; and (2) the precise quota indicated by the data falls in the intended range (i.e., between 56% and 65% minority).

2. DOES THE ETHNIC QUOTA DENY ADMISSION TO QUALIFIED NONMINORITY APPLICANTS?

Applying an ethnic quota to admissions does not inevitably deny admission to qualified applicants based on ethnicity. For example, suppose 200 applicants apply to a program with only 100 spaces available, and 67% of those spaces are reserved for minorities. Suppose further that two-thirds of the 200 applicants are minority, and that minority applicants as a group are equally as qualified as nonminority applicants. Under these circumstances, the 67% "ethnic space" quota could be fulfilled through a selection process based solely on qualifications. No qualified applicant would be denied admission based on the individual's ethnic group. The 66 nonminority applicants competing for a space each would have the same 50-50 chance of admission as the 134 minority applicants would have.

It is where such chances differ markedly between ethnic groups composed of equally qualified individuals that quotas have the effect of denying admission based on ethnicity/race. One can ascertain whether HISD's "ethnic space" quota produces that effect by comparing an applicant's chances of being admitted or instead being placed on a wait list, or turned away because the school had no more "ethnic space."

For a straightforward interpretation of these chances, imagine that each qualified applicant gets admitted, waitlisted, or turned away according to a single card dealt to that individual at a gaming table. Using Lanier as an illustration, the chances of receiving a "Waitlist" card would be 26 in 100 (Table 1, "All Groups") if everyone played at this one table.

In fact, the data shown above (see Figs. 1a -1e) establish that whites and Asians are obliged to play at a separate table, where the odds of acceptance are lower than at the table to which blacks and Hispanics are directed. A black or Hispanic applicant has a 100% chance of receiving an "Accept" card and no chance of receiving a "Waitlist" or "No space" card. By contrast, a white or Asian individual has only a 37% to 40%

chance of acceptance and over 1 chance in 4 of being turned away because of no "ethnic space." Plainly, the opportunities are unequal, and the inequality is driven by the artificial unavailability of space based on an individual's ethnicity or race.

These data support the conclusion that HISD's ethnic quota system demonstrably denies admission to qualified nonminority applicants within the vanguard and magnet school programs. The odds of admission are skewed consistently toward turning individuals away based on their ethnic identifier code.

Table 2--Comparative Admission Rates by Ethnicity/Race and Qualification Level:
Lanier Middle School (1997-98)

Ethnic ID	Admission rate for qualified applicants ranked in:				
	Top tier	2nd tier	3rd tier	4th tier	Bottom tier
Minority	100%	100%	87%	92%	1%
Nonminority	100%	76%	18%	14%	0%
SOURCE: Applicant data files for individual school programs. NOTE: Tiers defined as follows: Top tier is grade "A+/A", followed by "A-", "B+/B", "B-", and "C+/C/C-" (bottom tier).					

3. IS ETHNICITY/RACE THE DECIDING FACTOR IN ADMISSION?

The next question addressed is whether HISD's "ethnic space" practice skews the admissions process so severely that ethnicity/race, not academic qualification, becomes the deciding factor in granting admission. Specifically, is there evidence that qualified nonminority candidates seeking admission to a specific program get turned away while less-qualified minority candidates are admitted to that very same program at the same school? Such an effect would reveal itself in a sufficiently large sample of applicants arrayed separately by qualification level. To answer this question, I analyzed the data shown in Table 2, documenting the testing, rating, and admission of individual applicants to the programs at Lanier and Bellaire.

Lanier: Here, the deciding factor clearly is ethnicity/race for qualified applicants ranked below the top tier in Table 2. Specifically, minority applicants ranked in the 3rd or 4th tiers get admitted at a significantly higher rate (87% and 92%, respectively) than do nonminority applicants ranked in the 2nd tier (76%) and 3rd tier (18%). Comparison

within tiers reveals differences which are striking. In the 3rd tier, for example, minorities' admission rate is 87% vs. 18% for nonminorities. This pattern within the 2nd- to 4th-tier range shows the extent to which HISD's "ethnic space" practice skews the admissions process, making ethnicity/race (rather than academic qualification) the deciding factor. Indeed, over two-fifths of all admissions granted here depend on minority status, not rank.

Table 3--Comparative Admission Rates by Ethnicity/Race:
Bellaire Foreign Language Academy (1997-98)

Ethnic ID	Applicants scoring:		
	34 or higher	25 to 33	24 or lower
<i>Percentage admitted</i>			
Minority	100%	100%	0%
Nonminority	100%	1%	0%
<i>Number of applicants</i>			
Minority	47	93	235
Nonminority	149	108	74
White	93	72	51
Asian/PI	56	36	23
SOURCE: See Table 2.			
NOTE: Data refer to all applicants receiving letters of admission. Not all applicants who are admitted necessarily enroll.			

Bellaire: Here, race is the determining factor for applicants who score in the middle (see Table 3). Applicants of all races were admitted if they attained a total point score of 34 or higher. Among the 201 applicants scoring 25-33, virtually all (107/108) applicants classified white or Asian were denied admission, whereas all 93 black and Hispanic applicants were granted admission. In effect, nonminority applicants are held to a far higher standard. They must score 34 or higher to be admitted, whereas minority applicants need score no higher than 25. For the Bellaire program, HISD's

"ethnic space" practice so severely skews the admissions process as to make ethnicity/race the deciding factor in two-thirds of all admissions. That is, 93 of the 140 qualified applicants granted admission to Bellaire's foreign language program were selected on the basis of their ethnic code, not their total point score rank.

4. ARE THERE OTHER ALTERNATIVES FOR MAINTAINING RACIAL BALANCE?

In Houston as in other communities, racial and ethnic residential segregation complicates efforts to achieve enrollment balance. Conventional segregation measures suggest that residential segregation poses important constraints within HISD.⁵ Even if HISD has a valid interest in maintaining racial/ethnic balance, an "ethnic space" admissions practice may not be the only feasible way to do so within the vanguard and magnet programs. As previously noted, applying an ethnic quota to admissions does not inevitably deny admission to qualified applicants based on ethnicity. Within the demographic context of HISD, are there other feasible alternatives which could avoid purposeful discrimination based on race?

The question can be answered using census data on neighborhood racial/ethnic composition to delineate potential alternatives. For each subject school, it is possible to identify one or more nearby schools where minorities constitute a higher proportion of the neighboring resident population than at the subject school. Given minorities' higher residential proportion, one can estimate how much higher minorities would likely be as a proportion of all qualified applicants to the same program at that alternative school site. The estimates detailed below are deliberately conservative based on the working assumptions used and should be interpreted as minimums.

⁵ See, for example, the various measures of dissimilarity, isolation, and exposure in appendix tables accompanying Roderick J. Harrison and Daniel H. Weinberg, "Racial and Ethnic Residential Segregation in 1990," presented at the 1992 Population Association of America meetings. For metropolitan Houston, the Dissimilarity Index registers 0.665 for blacks and 0.493 for Hispanics; the Isolation Index registers 0.636 and 0.493, respectively. These measures indicate levels of residential segregation well above the national average.

Locational alternatives for Lanier:

- Shifting the Lanier Middle School vanguard program to nearby Lincoln Middle School would increase minorities' share from their current level (26% of qualified applicants at Lanier) to a level above 47% at Lincoln. That level would include sizable proportions of both blacks and Hispanics.
- Shifting Lanier's program instead to nearby Hogg Middle School would increase minorities' share to a level above 36% (principally Hispanics, along with a small proportion of blacks).
- Shifting Lanier's program instead to nearby Ryan Middle School would increase minorities' share to a level above 92% (almost all blacks).

Locational alternatives for Bellaire:

- Shifting the Bellaire High School magnet program to nearby Sharpstown High School would increase minorities' share from their current level (34% of qualified applicants at Bellaire) to a level above 36% at Sharpstown. That level would include sizable proportions of both blacks and Hispanics.

IV. HOW THE RESULTS WERE USED

In adversarial settings like this one, the results of applied demographic analyses may get used in different ways. Where adversaries need to find common ground and negotiate a solution, a demographer's technical analysis can narrow the scope of controversy by clarifying what lies beyond dispute. Here, technical analysis confirmed that HISD puts its policy into practice, allocating space within the magnet school programs through an ethnic quota system which unquestionably denies admission to qualified nonminority applicants. Its practice skews the chances of admission consistently toward denying individuals admission if they are white or Asian. This effect has been so severe that ethnicity/race (instead of academic qualification) often is the deciding factor in admissions. Qualified nonminority candidates seeking admission to a program often get turned away as less-qualified minority candidates are admitted to the same program at the same school.

The analysis also showed that nondiscriminatory alternatives for enhancing racial balance are feasible. Vanguard and magnet programs could be relocated geographically to achieve a more racially balanced distribution of qualified minority and nonminority applicants at each school. Armed with hard data on these two points, plaintiffs would likely prevail at trial--a reality which strongly motivated an out-of-court settlement as the trial date neared.

Earlier, the HISD Board had commissioned a task force study aimed at formulating a plan the Board could recommend. That plan, which offered a potential course of action which both parties might accept, was not finalized however until 10 days before trial. It called for two procedural changes: (1) eliminating ethnic guidelines as a factor in acceptance and (2) incorporating in the process qualitative components designed to broaden the scope of diversity beyond race and Hispanicity alone to encompass other important facets of diversity, such as foreign origins, linguistic diversity, and variations in family structure. Specifically:

- The plan would replace rules which *exclude groups* of individuals on the basis of racial or ethnic membership with a scoring system which *includes individuals* of any race. Such inclusion would reflect the obstacles disadvantaging particular

individuals of every race. Insofar as the prevalence of such obstacles differs statistically among groups, scoring *individuals* as proposed would foster racial and ethnic diversity in the aggregate.

- The proposed scoring system would lend itself to continuous improvement over time, as measures were refined and experience accumulated.

Leveling the playing field for each individual and fostering diversity beyond narrowly racial lines would mirror the ethnic, social, and cultural diversity inherent in HISD's population--an alternative politically easier to endorse than purposeful discrimination based on race. A further consideration (more apparent, perhaps, to demographers) was the potential for corrupted self-identification inherent in HISD's continued use of an ethnic identifier, especially with the "check-all-that-apply" question scheduled for use on the 2000 Census.⁶

The Board held several emergency meetings. Finally, three days before trial, it voted to repeal all ethnic guidelines and adopt the new implementation plan. It instructed the superintendent to offer a proposal that would nevertheless include race as one of several factors to be "narrowly tailored." The ambiguity here posed a barrier.

The judge refused to relent on the trial schedule. He instructed the attorneys for both sides to appear the following Monday morning and to present him with either a signed agreement or the plaintiffs' first witness. That weekend, a settlement was hammered out, and a divided school board voted by the narrowest majority to repeal its policy on the use of ethnic guidelines.

⁶ On October 30, 1997, the Office of Management and Budget announced its decision to revise the standards for classifying Federal data on race and ethnicity. The new standards permit respondents to mark more than one race on survey questionnaires. In addition, the "Asian or Pacific Islander" category has been divided into two categories, "Asian" and "Native Hawaiian or Other Pacific Islander," making a total of five racial categories ("Hispanic" is an ethnic category). The "black" category has been changed to "black or African American." The ethnicity question will include two categories: "Hispanic or Latino" and "Not Hispanic or Latino." Federal agencies will produce data on the number of individuals who mark only one racial category, as well as those who mark more than one.

APPENDIX

HOW THE "ETHNIC SPACE" POLICY WORKS⁶

Defendants begin accepting applications to the vanguard and magnet programs in November, and the application deadline is in early February. Applications received after the deadline are accepted, but are not considered in the first round of consideration. Information from the students' applications is transferred to a student profile sheet, and the relevant information is also entered into a computer database program run by each school's magnet coordinator.

At Herod, Rogers, and Lanier, the student profile sheets are evaluated, primarily by the magnet coordinator, and the applicant is assigned a letter grade, representing the student's overall ranking. A letter grade of "C" indicates that the student is not qualified for admission. Qualified students are denoted by an A or B ranking. The rankings are entered into the computer database.

Once the rankings have been calculated and entered into the database, the magnet coordinator then determines which students will be admitted. First, the coordinator calculates the available Minority space (65%) and the available Other space (35%) from the total number of available slots. The coordinator then determines the number of qualified Minority applicants by searching the database for black and Hispanic applicants with ranking scores in the A or B range. If that number is less than the available Minority space—as it usually is at Herod, Rogers, and Lanier—the coordinator then prepares acceptance letters for all qualified Minority applicants.⁷

Once the Minority applicants have been admitted, the coordinator then determines the number of qualified Other applicants. Because this number is always greater than the available Other space at Herod, Rogers, and Lanier, the coordinator will select from the list of Other applicants a sufficient number to fill the available Other space. (The process to this point is known as Phase I.)

Significantly, the coordinator will not admit enough Other students to fill the remaining available slots. Instead, the school will leave open the unfilled Minority slots. The coordinator will then begin the "Phase II" recruitment process. After the first round of admissions has closed, the coordinator will make additional efforts to recruit qualified Minority candidates to the program. The Phase II recruitment process lasts

⁶ This appendix is a verbatim condensation of Gregory S. Coleman's description, taken from his Plaintiffs' Motion for Summary Judgment Or, Alternatively, to Reorder Trial Proceedings.

⁷ It works a little differently at T.H. Rogers, but the effect is the same. At Rogers, the coordinator separates the student profiles based on ranking and ethnicity and then, beginning with the A+ ranked applicants, assigns them to the respective number of open Minority or Other slots. Once the Other slots are filled, no more Other students are admitted, and the coordinator simply continues on assigning the remaining qualified Minority applicants to the available Minority slots.

approximately six weeks. While the coordinators are usually able to recruit some additional qualified Minority applicants, it is usually not enough to fill the remainder of the Minority slots in the programs.

In late April or early May, the coordinator will prepare a report called the magnet petition. This report sets out in detail the coordinator's attempts to satisfy the District's 65-35 policy in Phase I and the coordinator's subsequent attempts to fill the remaining Minority slots in Phase II. Pursuant to Board Policy 721.300, the magnet petition also requests the District to release the remaining Minority slots so the coordinator can fill those slots with qualified applicants regardless of ethnicity. Only after the magnet petition has been approved by the District can the coordinator then admit qualified Other students who were not admitted in Phase I.⁸ As a result of this unnecessarily complicated admissions process, all qualified Minority applicants are admitted into the programs, while competition among white and Asian students for limited openings prevents all but the very top students from gaining admission.

At the Bellaire High School Foreign Language Academy magnet program, evaluation of the application is almost entirely objective, and the applicant is assigned a matrix score that represents the sum of the points awarded for various items on the student profile sheet. Each applicant's matrix score is entered into the coordinator's database. The coordinator then sets the qualification threshold at half of the highest matrix score for the year. For instance, the highest applicant matrix score for the 1997-98 school year was 51, and the coordinator set the qualification threshold at 25.

As in the vanguard programs, the coordinator uses the District's 65-35 ratio to determine the number of available Minority slots and Other slots. The coordinator then sorts the database by ethnicity and prints lists for each ethnicity in descending matrix score order. If the program has insufficient Minority applicants to satisfy the District's 65 percent enrollment goal, as has traditionally been the case,⁹ all qualified Minority applicants are accepted into the program.

The coordinator then fills the Other slots in top-down fashion. From the white and Asian computer print-outs, the coordinator admits applicants with progressively lower matrix scores until she has selected enough applicants to fill the Other slots. Other applicants with matrix scores close to the students who are admitted are placed on a waiting list, and the rest of the qualified Other applicants are sent "Qualified, No Space" letters. As a result of this bifurcated admissions process in which every ethnicity competes against its own ethnicity for space, every Minority applicant with a matrix score of 25 or higher was accepted into the program, while white and Asian

⁸ Although the District's approval of the magnet petition permits them to fill the remainder of the slots with students irrespective of race, Herod Elementary continues to hold at least 20 percent of its kindergarten slots, 10 percent of its 1st and 2nd grade slots, and 5 percent of its slots in grades 3-5 for Minority students.

⁹ Bellaire actually had enough qualified Minority applicants for the 1997-98 school year to satisfy the District's enrollment quota, but the coordinator knew she would not be able to fill all of the Minority seats because the program's acceptance rate is approximately 50 percent.

applicants had to have a matrix score of 34 or higher to get accepted. As with the vanguard programs, the coordinator at Bellaire is required to go through the magnet petition process before she can open up the remaining slots to students on the waiting list regardless of race.

The discriminatory effect of the magnet and vanguard admissions policy is significant. Every qualified Minority applicant is admitted, but there is heavy competition for Other positions. At each school, there is ranking or matrix score above which all applicants are admitted. Below that line is an interval, which extends all the way down to the qualifications floor, in which every Minority applicant is admitted and every Other applicant is denied. Within that interval, race or ethnicity becomes the determinative factor in the admissions process. Below the qualifications floor, of course, all applicants are denied.

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